

be granted *nunc pro tunc*. It is undisputed that, stock transactions, *cumulatively* involving the transfer of more than 50% of Nasby's total issued and outstanding stock, took place over the course of an approximate two-month period, undertaken for the payment of debts owed (by the corporation to Root; by Root to his parents), corporate reorganization (to provide treasury stock relative to Moore's option agreement) or for estate planning purposes (by Thomas L. and Kathy G. Root for the benefit of their minor children). These ownership changes were first reported to the Commission in an April 1990 amendment to the June 1989 renewal application and the June 1989 annual ownership report, prior to the filing of the October 1992 transfer of control application. The proposed transfer of less than 50% of Nasby's total issued and outstanding stock which is the subject of the second transfer of control application relates to the proposed satisfaction of a debt owed by Root individually for which his parents have guaranteed in the event of his default. The second transfer of control application is contingent upon the resolution of the first issues relative to the first transfer of control application.

26. In reviewing the record evidence, the facts of this case support the grant of the first transfer of control application, without the imposition of any sanctions, including forfeiture. At all times relevant, actual station management, operation and control has never changed. The station has had only two General Managers in its history -- David L. Williamson and Timothy J. Moore -- both of whom have been exclusively responsible for the

management, operation and control of WSWR during their respective tenures. The individual qualifications of these individuals have previously been "passed upon" by the Commission and are not the subject of inquiry herein. Both gentlemen reasonably relied upon Root to handle the station's corporate and FCC matters for several years, including the stock transactions which form the basis of the first transfer of control application. Root had provided these services to the station for a number of years in a routine manner. Kathy G. Root also reasonably relied upon her husband to file whatever paperwork was necessary to seek a transfer of control, knowing that he was the station's FCC and corporate attorney. The stock transactions for which *nunc pro tunc* approval is being sought, independently involve less than a controlling interest in the station, and there is no evidence of an intent by Nasby to deceive the Commission by not seeking prior Commission approval. Indeed, an amendment to the 1989 annual ownership report reflecting the ownership changes was filed as was an amendment to the pending license renewal. Nasby itself brought the information to the attention of the Commission following its securing of new legal counsel, who upon review of the records of the company, determined that cumulative stock transactions may have required that Nasby seek prior FCC approval. This information was reported to the Commission during a time of significant upheaval experienced by Nasby largely resulting from the revelation that its former counsel and principal had engaged in misconduct, unknown to, and unrelated to, Nasby, and that such misconduct could have a potential

detrimental effect on the station's license renewal and reputation in the community it has served for over twelve years. The Commission should weigh the practical effect Root's misconduct has had on Nasby (expenses incurred in defending its license renewal, damage to reputation in community), including his failure to provide Nasby with legal services in the routine manner which Nasby had enjoyed for a period of years prior to Root's aberrational behavior and to which Nasby was entitled, with the further harm to innocent Nasby shareholders and potential shareholders, in reaching its conclusion, that the transfers should be approved *nunc pro tunc*. As with the resolution of Issue 1 in Nasby's favor, to the extent there has been any harm to the Commission's processes in not seeking prior FCC approval of the stock transfers encompassed in the first transfer application, that harm has been more than offset by the federal and state prosecutions of Root for which Root is currently imprisoned.

#### *Ultimate Conclusions*

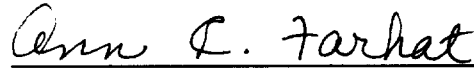
27. All Nasby officers, directors and/or shareholders were not connected in any way with the matters for which Thomas L. Root was adjudged guilty, nor did they have any prior knowledge of Root's misconduct. As of March 21, 1990, Root was no longer an officer, director or shareholder of Nasby and had no "ownership" relationship with Nasby at the time of his first criminal adjudications in January 1992. He also resigned as legal counsel in April, 1990, long prior to his federal and state criminal adjudications. Moreover, Root had no involvement at any time in

the day-to-day management, operation and control of Station WSWR; such management rests exclusively with the station's General Manager -- currently Timothy J. Moore (and prior to him, David L. Williamson). Nasby and station management reasonably relied upon Root to handle corporate and communications legal matters, which matters were routinely handled by Root through services he provided from his Washington, D.C. law offices. Station WSWR, Nasby and its individual principals had no reason to suspect, nor could they have suspected or known that Root's conduct in matters wholly unrelated to Nasby and WSWR, would at a future date have a potential detrimental effect to the station and its license renewal. The station and its principals have not engaged in any wrongdoing or misconduct and have suffered enough from the expense of this proceeding as well as the innuendo and rumors spread by competitors in the small communities of Shelby and Willard.

28. The interests of the Commission in preserving its processes is a valid one. However, under the circumstances here, the interests of the Commission have been adequately served by the extremely public federal and state criminal prosecutions of Root, his disbarment and ultimately, his incarceration in a federal prison where he remains to this day. The innocent Nasby shareholders, officers and directors as well as the station's employees should not be punished by the FCC for the misconduct engaged in by Root outside Nasby's respective knowledge and control. The record evidence fully supports, and the interests of the Commission and Nasby require, grant of Nasby's renewal

application for Station WSWR(FM) for a full license term and the grant of the transfer of control applications, without any forfeiture imposed by the FCC.

Respectfully submitted,



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March 4, 1994

CERTIFICATE OF SERVICE

Ann C. Farhat, a member of the firm of Bechtel & Cole Chartered, certifies that on March 4, 1994, she caused copies of the foregoing Proposed Findings of Fact and Conclusions of Law of The Petroleum V. Nasby Corporation to be served by hand on the following individuals:

The Honorable Edward J. Luton  
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Federal Communications Commission  
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